



Academic freedom in the European Union: A human rights approach

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Abstract: Academic freedom is under threat throughout Europe and beyond. Recent EU debate highlights the need for a protective legal framework while human rights law principles provide a nourishing context.

Academic freedom is being eroded throughout Europe according to a report on [EU member states published](#) in March 2023. The study confirmed that, despite differences between countries, there are common threats to academic freedom and/or conditions necessary to exercise it. Threats of various natures have been identified. Political interference has been documented in Belgium, Denmark, Germany, the Netherlands, and Sweden. In Germany, the far-right political party [Alternative für Deutschland](#) (AfD), which won 94 seats in the 2017 federal election to become the third largest party in the country and the largest opposition party, proposed cutting all funding for gender studies at German universities in 2020. Meanwhile, government interference was behind the well-known case of the Central European University in Hungary. Founded by Hungarian-US philanthropist George Soros in 1991, most of the CEU's degree programmes are accredited in the US but the new laws stipulate that 'foreign' universities must have a 'parent' institution in the country of origin. CEU set up a campus in New York state, but the Hungarian government did not sign an agreement allowing the university to continue its operations in Budapest.

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CEU subsequently lost its right to issue US-accredited diplomas in Hungary and was forced to set up a new campus in Vienna. There has been similar government interference in tertiary education in Croatia, Denmark, Greece, Ireland, Romania, Slovakia, and Slovenia.

Sometimes, threats come from within academic institutions themselves: in Austria, Croatia, Denmark, Germany and the Netherlands, there are worries about the academic freedom of temporary academic staff. These concerns relate to the extent to which they can criticise their universities without fear of missing out on a tenured position or for their academic career in general. In Denmark, Germany, Malta, and the Netherlands, there is unease about growing involvement of the private sector in funding scientific research and potential impact on results of research projects conducted by university researchers.

Civil society interference has also surfaced recently when academics involved in public debates on COVID-19 were attacked on social media, forcing them to withdraw from their expert role and/or related research. This happened in Austria, Belgium, Denmark, Finland, Germany, the Netherlands, and Sweden.

Current challenges

In the light of these events, the European Parliament is [asking](#) the European Commission to draft new regulations to strengthen protection of academic freedom in EU member states.

The subject is not controversy-free. One of the main obstacles to regulations on academic freedom at EU level relates to the way in which legislative competences are distributed in the EU.

[Article 13](#) of the Charter of Fundamental Rights of the European Union provides the most direct reference to academic freedom: 'The arts and scientific research shall be free of constraint. Academic freedom shall be respected'. Freedom of the arts and sciences is linked mainly to the freedoms of thought (Article 10) and expression (Article 11). The Charter only applies to the EU institutions with due regard for the principle of subsidiarity and to the Member States when they are implementing Union law.

Considering that academic freedom has traditionally been regulated under the Education portfolio, which is a competence of member states and not of the Union, we might consider Article 13 an ineffective means of protecting academic freedom. However, the EU has competences in the field of scientific research. If a problem regarding academic freedom occurs in connection with scientific research, Article 13 of the Charter would be applied linked to [Article 179](#) TFEU (on research). This happened with the above-mentioned case of the CEU. In 2020 the Court of Justice of the European Union [CJEU](#) applied Article 13 in a context in which Hungary's restrictive legislation interfered with its commitments under the General Agreement on Trade Services/World Trade Organisation (GATS/WTO) and Article 49 TFEU (Freedom of Establishment). As GATS is part of EU law, the Charter could be usefully invoked.

Another issue concerns the difficulty of finding a legal framework which can tackle all the challenges related to the freedom of academic research in all

EU member states. Human rights principles can be of help in this regard. The Guild of European Research Intensive Universities published a [statement in 2021](#) supporting the Bonn Declaration on Freedom of Scientific Research, which commits EU member states to academic freedom. The League of European Research Universities (LERU) published a [paper](#) in April 2023 (the first one on this issue was back in 2010) presenting the main dimensions and scope of academic freedom, highlighting it as a fundamental right which should be enforced and protected as such. Rather than providing a closed definition of academic freedom which would be difficult, LERU opts for emphasising some facets of this right that can serve as common denominator for member states. As we will see, the LERU report is in line with the views of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

Academic freedom: a multifaceted human right

The LERU views academic freedom as including the following three aspects:

- **An individual right** to expressive freedoms for members of the academic community (both staff and students) as individuals, including freedom to study, teach, freedom of research and information, of expression and publication (including the 'right to err') and to undertake professional activities outside of academic employment.
- **Collective or institutional autonomy** for the academy in general and/or subsections. This implies that departments, research units, faculties and universities have the right (and obligation) to preserve and promote the principles of academic freedom in the conduct of their internal and external affairs while they are also protected against undue interference.
- **A corresponding obligation for the public authorities to respect academic freedom**, to protect it and take measures in order to ensure an effective enjoyment of this right.

These aspects are in line with the [report](#) on academic freedom published in 2020 by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. According to the Special Rapporteur, academic freedom involves freedom of individuals, as members of academic communities, institutional protections – autonomy and self-governance, themselves rooted in human rights standards – and positive obligations of states to create an enabling environment for seeking, receiving and imparting information and ideas, including institutional protection and autonomy.

The UN Special Rapporteur states that although there are many ways in which the freedom of opinion and expression protects and promotes academic freedom, there is no single, exclusive international human rights framework for the subject. However, within the corpus of civil and political rights codified in the International Covenant on Civil and Political Rights

([ICCPR](#)), the rights to peaceful assembly and association, privacy, thought, conscience and religious belief can promote and protect academic freedom. Also, the right to education and the right to scientific advancements codified in the International Covenant on Economic, Social and Cultural Rights ([ICESCR](#)) expressly promote rights central to academic freedom.

A gender perspective

The report on academic freedom in the EU member states highlights several threats which specifically impact gender issues. Besides the case of *Alternative für Deutschland* previously mentioned, there are other worrying examples. The Hungarian government has revoked accreditation from all gender studies programmes; the Polish government has called for a ban on gender studies in universities while Romania has barred curricular and extracurricular activities based on gender-critical theories.

Moreover, the UN Special Rapporteur's report on the right to freedom of opinion and expression showed that women are especially threatened in the context of academic freedom beyond European frontiers. Sexual violence on campus, reported in some US universities, puts women's safety at risk. Harassment of female academics may be universal; however, a state's particular context may characterise the types of threats that interfere with academic freedom. In Pakistan, girls and women of some ethnic minorities are not allowed to access education and when they are, they are obligated to comply with a strict dress code in the name of promotion of culture and ethics and with other practices that perpetuate gender inequality. In [Afghanistan](#), females are no longer allowed to attend secondary school and higher education.

Way forward

Academic freedom is in increasing danger in Europe and beyond. A multi-faceted legal framework to protect this right is needed. Human rights legislation at both European and International level provides a set of different principles that intersect with the different aspects of academic freedoms. This can be helpful to nourish a comprehensive approach to the concept of academic freedom and to deal with the potential threats to it. This seems especially timely now that the debate on academic freedom has been relaunched in the EU agenda with the constitution of the platform '[EP Forum for Academic Freedom](#)' under the auspices of the [European Parliament](#)'s STOA Panel for the Future of Science and Technology, a forum that offers a place to stakeholders to discuss how to protect the academic freedom in Europe.